v. *Jacobson,* 48 Fed. 21, 1 C. C. A. 11, and has been refused when entailing hardship or injustice to innocent third parties. *Owens* v. *McNally,* 113 Cal. 444. Such relief is often times, as in the principal case, termed specific performance, yet it should be noted that strictly speaking an agreement to make a certain disposition of property by will "is not capable of specific execution in the party's life-time, and after his death it is no longer possible to make" a will for the decedent. 3 PARSONS, CONTRACTS, Ed. 9, § 406. Thus as pointed out by ROOT, J., in an opinion concurring in the final judgment in the principal case the remedy should be effected by holding the beneficiaries under the will to be trustees of the property for the benefit of the plaintiff. See PAGE, WILLS, § 79. *Bolman* v. *Overall,* 80 Ala. 451.

WILLS—REVIVAL BY REVOCATION OF REVOKING INSTRUMENT—RE-PUBLICATION.—Deceased executed a second will which contained a clause revoking her first will. A short time after its execution, she destroyed this last testament under circumstances that evidenced an intention to revive the former will, which she had always retained in her possession. *Held,* that the destruction did not raise any presumption of revival, but that the question depended upon the testator's intent, which might be shown by parol evidence. *Blackett* v. *Ziegler* (Iowa 1911), 133 N. W. 901.

Of the conflicting rules governing the revival of a former will under the above circumstances, the court chose the one which was first laid down in the English ecclesiastical courts. There it was held that the testator's intent should govern, the legal presumption being considered "neither adverse to, nor in favor of" the former will. *Usticke* v. *Bawden,* 2 Add. Ecc. 116; SCHOULER, WILLS, Ed. 3, § 413. The common law tribunals had decided that a presumption arose in favor of the earlier will. PAGE, WILLS, § 271. Lord MANSFIELD in *Harwood* v. *Goodright,* 1 Cowp. 91. This rule was established without reference to a distinction made in a number of American decisions between the cancellation of a second will merely inconsistent with the prior one, and of one that expressly revoked the prior instrument. Some courts allow a revival in the first instance, the revocation being by implication alone; that would not allow a prior will to be revived when the revocation is express. So in *Scott* v. *Fink,* 45 Mich. 241, 246, Judge GRAVES, after contrasting the two modes of revocation, says the addition of an express revoking clause is "unequivocal" and the destruction of the revoking instrument cannot effect the revival of the revoked will. A number of States are in accord, and do not allow a revival of a revoked will except by re-execution, see 30 AM. & ENG. ENCYC. OF LAW, 658, but in the absence of a statute requiring a formal republication, the weight of authority is with the doctrine enunciated by the ecclesiastical courts and just adopted by the Iowa Supreme Court. *Pickens* v. *Davis,* 134 Mass. 252; *Stetson* v. *Stetson,* 200 Ill. 601. This certainly seems the logical rule to effect the testator's wishes. To require a republication or re-execution of the will would frustrate his attempt to dispose of his estate, while if the destruction of the revoking instrument operated *ipso facto* to revive the prior will the result might be the probate of an instrument, the very existence of which had been forgotten by the testator. It can not be a dangerous doctrine when the intent is fully established by admissible parol evidence of "disinterested witnesses."